

ALJ/JSW/avs

Decision 02-01-052 January 23, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into Natural Gas
Procurement and Reliability Issues.

Rulemaking 88-08-018
(Filed August 10, 1998)

Order Instituting Rulemaking on the
Commission's Own Motion to Change the
Structure of Gas Utilities' Procurement Practices
and To Propose Refinements to the Regulatory
Framework for Gas Utilities.

Rulemaking 90-02-008
(Filed February 2, 1990)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

1. Summary of Award

We award The Utility Reform Network (TURN) \$2,378.44 for its substantial contribution to Decisions (D.) 01-05-074 and D.01-08-027 pertaining to Southern California Generation Coalition's (SCGC) emergency petition for modification of Southern California Gas Company's (SoCalGas) imbalance rules regarding gas storage for non-core customers.

2. Background

On February 15, 2001, SCGC filed an emergency petition to modify D.90-09-089 and D.97-11-070.¹ SCGC's petition requested that the two decisions

¹ D.90-09-089 and D.97-11-070 are reported in 37 CPUC2d 583 and 76 CPUC2d 598, respectively.

be modified to waive the 10 percent limit on monthly positive imbalances (overnominations) for noncore customers during the winter balancing period. Further, SCGC requested permission for noncore customers to combat gas price spikes by using their previous months' accumulated positive imbalance volumes to meet at least a portion of SoCalGas' flow requirement.

In D.01-05-074, the Commission denied SCGC's petition, concluding that SCGC failed to meet the burden of proposing specific wording changes in its petition to modify either D.90-09-089 or D.97-11-070.² The Commission also found that the petition sought to make permanent and extensive revisions. Specifically, the petition sought to revise the gas storage and balancing rules to effectively allow noncore customers to avoid paying gas storage charges contrary to the express goals of both D.90-09-089 and D.97-11-070, where those issues were previously considered and rejected.³

SCGC's application for rehearing of D.01-05-074 was denied in D.01-08-027.

² Rule 47 of the Commission's Rules of Practice and Procedure requires the petitioner to "propose specific wording to carry out all requested modifications to the decision."

³ In D.97-11-070, the Commission concluded "SoCalGas' gas customers should not be required to subsidize the use of SoCalGas' storage or gas purchasing services by gas shippers who under deliver gas supplies to SoCalGas' system." (76 CPUC2d at p. 604.) In D.90-09-089, the Commission rejected a proposed settlement provision that would have allowed SoCalGas' transportation customers to carry over the positive imbalances equal to 10 days of average use without penalty. In rejecting that settlement provision, the Commission stated that the provision regarding balancing services amounted to free storage, and the provision was "unlikely to encourage customers to plan their gas takes carefully, and that utilities and their ratepayers should not be responsible for the costs associated with imbalances." (37 CPUC2d at p. 623.)

3. Requirements for Award of Compensation

An intervenor who seeks compensation for its contribution to a Commission proceeding must file a request for compensation pursuant to Pub. Util. Code Sections 1801-1812.⁴ Section 1804(a)(1) requires a customer who intends to seek compensation to file a Notice of Intent (NOI) to claim compensation and serve a copy of its NOI on all parties to the proceeding within 30 days after the first prehearing conference (PHC). In cases where no PHC is scheduled or where the Commission anticipates that the proceeding will take less than 30 days, the Commission may determine a procedure to be used in filing those requests.

The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer⁵ expects to request. The NOI may also request findings of eligibility and of significant financial hardship.

Other Code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission. Under Section 1804(c), an intervenor requesting compensation must provide a "detailed description of services and expenditures

⁴ All statutory references are to the Public Utilities Code unless otherwise stated.

⁵ To be eligible for compensation, an intervenor must be a customer as defined by Section 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interest as customers. (*See* D.88-12-034, D.92-04-051 and D.96-09-040.) Today's decision, like the statute, uses "customer" and "intervenor" interchangeably.

and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that:

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience, and who offer similar services, consistent with Section 1806.

4. NOI to Claim Compensation

No PHC was held in this phase of the proceeding. However, TURN had previously filed an NOI in an earlier phase of this proceeding, and was found eligible for compensation in a ruling dated January 26, 1994. Additionally, in D.98-11-014, the Commission found TURN had met the significant financial hardship requirement of Section 1802(g) in this proceeding. Under Rule 76.76 of the Commission's Rules of Practice and Procedure, an intervenor found eligible in one phase of a proceeding remains eligible for later phases of the same proceeding. Thus, TURN has satisfied the eligibility and significant financial

hardship requirements and is eligible to seek an award of compensation in connection with its contribution to D.01-05-074 and D.01-08-027.

5. Requests for an Award of Compensation

The Commission issued D.01-05-074 and D.01-08-027 on May 25, 2001, and August 7, 2001 respectively. TURN's October 9, 2001 request for compensation was timely filed with the Docket Office, pursuant to Section 1804(c).

6. TURN's Substantial Contribution

TURN asserts that it made a substantial contribution to D.01-05-074 and D.01-08-027 by representing the interests of SoCalGas' core customers to ensure that the utility and core customers do not subsidize gas storage for noncore customers. TURN generally supported the position of SoCalGas. TURN agreed with the utility that SCGC's petition should be denied, and made several arguments in opposition to the petition. Additionally, TURN urged the Commission to consider rebundling noncore storage or allowing SoCalGas to charge for storage of overnominated gas.

In D.01-05-074, we agreed with both SoCalGas and TURN that granting SCGC's petition would allow the petitioner and other noncore customers to avoid paying storage charges. We declined, however, to consider TURN's suggestion to rebundle the costs of storage in transportation rates.

While we did not adopt all of TURN's proposals in D.01-05-074, we did reaffirm our rules for gas procurement practices and transportation services, including the monthly balancing rules adopted in D.90-09-089. Those rules seek to encourage SoCalGas' transportation customers to plan their gas takes carefully. Accordingly, we rejected SCGC's proposal because, as TURN argued, it would make the utility and core customers responsible for the costs associated with

imbalances. Thus, we determine that TURN's participation made a substantial contribution to the resolution of issues in D.01-05-074 and D.01-08-027.

7. The Reasonableness of Requested Compensation

In D.98-04-059, the Commission adopted a requirement that an intervenor must demonstrate that its participation was "productive," as that term is used in Section 1801.3. In that decision, we discussed the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. However, assigning a dollar value to intangible benefits is sometimes difficult. Customers are directed to demonstrate that the benefit to ratepayers outweighs the compensation award.

TURN points out that since core assets are used for balancing, any revenues from gas sales due to utility standby services flow to core customers. However, any loss in revenues from standby service would directly decrease the credits to the Core Purchased Gas Account, resulting in higher gas costs for core customers. While hard to quantify, we find that the costs of TURN's participation are reasonable in relation to the benefits ratepayers realized through that participation.

TURN requests compensation of \$2,378.44 for work performed in this proceeding. This figure includes advocacy fees and other costs of participation in this proceeding. The amount requested is reasonable, as discussed below.

TURN submitted detailed time sheets showing attorney Marcel Hawiger (Hawiger) expending 11.5 hours but only claiming 8.5 hours at an hourly rate of \$190 for a total request of \$1,615. TURN has not requested compensation for time spent preparing its compensation request. Previously, in D.01-10-008, we found that an hourly rate of \$190 in 2001 is reasonable for work performed by

Hawiger. We will follow D.01-10-008 and compensate Hawiger's time at \$190 per hour for work performed in this proceeding.

TURN has requested \$763.44 for photocopying (\$638.00) and postage (\$125.44). Given the very large service list for this proceeding, these figures appear to be reasonable and thus compensable.

As in all intervenor compensation decisions, we put TURN on notice that the Commission staff may audit its records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. These records should identify specific issues for which TURN requests compensation, the actual time spent by each person, the applicable hourly rate, fees paid, and any other costs for which compensation has been claimed.

8. Summary of Compensation Award

We find that TURN has met all the necessary requirements to seek an award of compensation in this proceeding. TURN's request for compensation, as set forth above, is reasonable. Since this decision addresses a request for compensation, the public review and comment on the draft decision was waived pursuant to Rule 77.7 (f)(6) of the Commission's Rules of Practice and Procedure.

Findings of Fact

1. TURN filed a timely intervenor compensation request for its contribution to D.01-05-074 and D.01-08-027.
2. A rebuttable presumption of significant financial hardship exists for TURN.
3. TURN has substantially contributed to D.01-05-074 and D.01-08-027.

4. D.01-10-008 found a rate of \$190 per hour to be reasonable compensation for attorney Hawiger's professional services in 2001 considering his experience, effectiveness, and rates paid other attorneys.

5. The costs incurred by TURN for copies and postage are reasonable.

Conclusions of Law

1. TURN has fulfilled the statutory requirements of Pub. Util. Code Sections 1801-1812.

2. TURN should be awarded \$2,378.44 for its substantial contribution to D.01-05-074 and D.01-08-027.

3. Southern California Gas Company should pay TURN \$2,378.44.

4. Pursuant to Section 311(g)(3) and Rule 77.7 (f)(6) of the Commission's Rules of Practice and Procedure, the 30-day public review and comment period for today's decision should be waived.

5. This order should be effective today so that TURN may be compensated without undue delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$2,378.44 in compensation for its substantial contribution to Decision (D.) 01-05-074 and D.01-08-027.

2. Southern California Gas Company shall, within 30 days of this order, pay to TURN \$2,378.44.

3. The public review and comment period for today's decision is waived, and

4. These proceeding are closed.

This order is effective today.

Dated January 23, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners